

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

OCT 15 2009

JOHN J. DORRIGAN, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

PATRICIA A. GAMBOA,	)	CASE NO. 4:09CV00009
	)	
Plaintiff,	)	
v.	)	<u>REPORT AND RECOMMENDATION</u>
	)	
MICHAEL J. ASTRUE, Commissioner	)	By: B. Waugh Crigler
of Social Security,	)	U. S. Magistrate Judge
	)	
Defendant.	)	

This challenge to a final decision of the Commissioner which denied plaintiff's January 10, 2007 protectively-filed claim for a period of disability and disability insurance benefits under the Social Security Act ("Act"), as amended, 42 U.S.C. §§ 416 and 423 is before this court under authority of 28 U.S.C. § 636(b)(1)(B) to render to the presiding District Judge a report setting forth appropriate findings, conclusions and recommendations for the disposition of the case. The questions presented are whether the Commissioner's final decision is supported by substantial evidence, or whether there is good cause to remand for further proceedings. 42 U.S.C. § 405(g). For the reasons that follow, it is RECOMMENDED that an Order enter AFFIRMING the Commissioner's final decision, GRANTING the Commissioner's motion for summary judgment and DISMISSING this case from the docket of the court.

The instant action was filed on March 31, 2009. (Dkt. No. 1.) The administrative record was filed on July 31, 2009. (Dkt. No. 7.) Pursuant to this court's March 10, 2005 Standing Order, plaintiff had thirty days in which to file a brief supporting her challenge to the Commissioner's final decision. No such brief was filed.

On September 30, 2009, the undersigned issued a show cause order directing plaintiff to show cause by October 14, 2009 for her failure to prosecute. (Dkt. No. 13.) The Commissioner

moved for summary judgment on October 2, 2009. (Dkt. No. 14.) Plaintiff has failed to respond to the court's order to show cause by the date specified and has offered no opposition to the Commissioner's motion for summary judgment. At this juncture, plaintiff, by counsel, essentially has done nothing to advance her complaint beyond filing it. The Commissioner's final decision should be affirmed, and the case dismissed on account of the plaintiff's failure to prosecute.

For these reasons, it is RECOMMENDED that an Order enter AFFIRMING the Commissioner's final decision, GRANTING the Commissioner's motion for summary judgment and DISMISSING this case from the docket of the court.

The Clerk is directed to immediately transmit the record in this case to the presiding United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note objections, if any they may have, to this Report and Recommendation within (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection. The Clerk is directed to send a certified copy of this Report and Recommendation to all counsel of record.

ENTERED:

  
U.S. Magistrate Judge

10-15-09  
Date